IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1357/2001

Reserved on: 8.10.2007

Decided on. 29.10. 2007

Uttam Chand and others. **…Petitioners.**

Versus

State of H.P. and others. **Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*. yes.*

For the petitioners : Mr. Ajay Sharma, Advocate.

For the respondents Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocate Generals for respondents No.1 to 3.

Mr. Raj Negi, Advocate for respondents No. 4 & 5.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of the present petition are that the Collector, Una, District Una vide order dated 2nd April, 1975 passed the order declaring 24238/33042 share of Khewat No.1 measuring 1072 kanals 19 marlas situated in village Lohara as surplus with a further direction that this land shall vest in the Government under section 11 of the H.P. Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the Act for short). The predecessor-in-interest of the petitioners preferred an appeal under section 20 of the Act against the order dated 2.4.1975 before the Divisional Commissioner. The Divisional Commissioner rejected the appeal on 6.8.1975. The review petition was filed before the learned Divisional Commissioner seeking a review of order dated

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes.

6.8.1975, which was dismissed by the Divisional Commissioner on 6.10.1975. The predecessor-in-interest of the petitioners filed revision petition under section 20 (2) of the Act before the Financial Commissioner (Appeals) which was dismissed by him on 24.8.1976. The petitioners filed revision under section 20(3) of the H.P. Ceiling on Land Holdings Act, 1972 assailing the order of the Collector, Una dated 2.4.1975 passed in case No. 643/74. The learned Financial Commissioner rejected the revision on 28.6.2001 primarily on the ground that the earlier revision preferred under section 20 (2) of the H.P. Ceiling on Land Holdings Act, 1972 stood dismissed by his predecessor 20 years ago. The other ground for dismissing the revision was that the earlier order passed by the Collector dated 2.4.1975 had merged in the order of the Divisional Commissioner dated 6.8.1975 and that order has further merged in the order passed by the Financial Commissioner on 24.8.1976.

Mr. Ajay Sharma, Advocate had strenuously argued that the order passed by the Financial Commissioner dated 28.6.2001 is not sustainable in the eyes of law since according to him the Financial Commissioner has failed to exercise the jurisdiction vested in him under section 20 (3) of the of the H.P. Ceiling on Land Holdings Act, 1972. Mr. Sharma also contended that the legality and propriety of the earlier orders dated 2.4.1975 by the Collector, Una can be seen by the Financial Commissioner under section 20 (3) of the H.P. Ceiling on Land Holdings Act, 1972.

The learned Advocate General had strenuously argued that once the revision filed by the predecessor-in-interest of the petitioners under section 20 (2) of the Act has been dismissed by the Financial Commissioner vide order 24.8.1976, second revision could not be filed under section 20(3) of the Act.

I have heard the learned counsel for the parties and perused the record.

It will be apt to reproduce in its entirety section 20 of the H.P. Ceiling on Land Holdings Act, 1972 for better appreciation of the arguments advanced by the learned counsel for the parties, which reads thus:.

> **"20. Appeal, review and revision- (1) Any person aggrieved by any decision or order of the Collector may within sixty days from the date of the decision or order prefer an appeal to the Commissioner.**
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> **Provided that the Commissioner may entertain the appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.**
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> **(2) Any person aggrieved by an order of the Commissioner made under sub-section (1) may, within ninety days from the date of the order, file a revision petition before the Financial Commissioner so as to challenge the legality or propriety of such order and the Financial Commissioner may pass such order as he may deem fit. The order of the Financial Commissioner shall be final.**
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> **(3) Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit."**

In the present case, the order has been passed by the Collector on 2.4.1975 whereby an area measuring 1072 kanals 19 marlas was declared surplus situate in village Lohara and was ordered to be vested in the State of H.P. under section 11 of the H.P. Ceiling on Land Holdings Act, 1972. The order was assailed before the Divisional Commissioner by way of appeal under section 20 of the H.P. Ceiling on Land Holdings Act, 1972. The Divisional Commissioner rejected the appeal on 6.8.1975. The revision was preferred against the order of the Divisional Commissioner before the Financial Commissioner. The Financial Commissioner had upheld the orders passed by the Collector as well as Divisional Commissioner dated 2.4.1975 and 6.8.1975 respectively while rejecting the revision on 24.8.1976. Once the Financial Commissioner had exercised the powers of revision under section 20 (2) of the H.P. Ceiling on Land Holdings Act, 1972, he cannot exercise the same powers afresh under section 20 (3) of the Act, to adjudge the illegality and suitability of the orders passed. If the submission of Mr. Ajay Sharma, Advocate is accepted that the second revision could be preferred under section 20 (3) of the Act, it will lead to anomalous situation. The entire section 20 has to be read harmoniously. The Financial Commissioner is at the highest level in the hierarchy of the authorities mentioned under the Act. The Financial Commissioner in the present case had already upheld the orders of the Collector and Divisional Commissioner. Once the Financial Commissioner has upheld the order of the lower authorities while exercising the revisional power under section 20 (2) of the Act, he cannot come to a different conclusion while exercising the power under section 20(3) of the H.P. Ceiling on Land Holding Act, 1972. It is provided under sub-section (1) of section 20 that person aggrieved by the order of the Collector may within sixty days from the date of decision or order prefer an appeal to the

Commissioner. The person aggrieved by the orders passed by the Commissioner can prefer a revision before the Financial Commissioner within ninety days from the date of the order. This exercise has already been taken by the predecessor-in-interest of the petitioner by filing the appeal and thereafter revision before the Financial Commissioner (Appeals). Once the revisional power has been exercised under sub-section (2) of section 20 of the Act, the same cannot be exercised on the same and similar facts under sub-section (3) of section 20 of the Act.

The orders passed by the various authorities like the Financial Commissioner constituted under the Act have to be given finality after the culmination of proceedings and the same cannot be permitted to be reopened on the same and similar facts to avoid uncertainty.

It is also evident from the language employed under sub-section (3) of section 20 of the Act that the *Financial Commissioner can call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit*. Thus it is evident that the Financial Commissioner under sub-section (3) of section 20 of the Act can call for the record, if no revision has been preferred against these orders under section 20 (2) of the Act. Meaning thereby if the orders passed by the subordinate authorities have merged in the orders of the Financial Commissioner (Appeals) while exercising the powers under sub-section 2 of section 20 of the Act, the parties are precluded from invoking sub-section 3 of section 20 of the Act.

Consequently it is held the Financial Commissioner (Appeals) had come to a just conclusion that once his predecessor had exercised the power of revision on 24.8.1976 under section 20 (2) of the Act, he could

not again exercise the same under sub-section (3) of section 20 of the Act to see the legality and propriety of order dated 2.4.1975 passed by the Collector, Una. There is neither any jurisdictional error nor any procedural irregularity in the order passed by the Financial Commissioner.

In result, the writ petition is dismissed with no as to costs.

(Rajiv Sharma), Judge

October, 29, 2007
Awasthi